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FILED WITH THE BOARD OF
PSYCHOLOGICAL EXAMINERS
ON January 14, 2010
J. Michael Hester

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF	:	Administrative Action
	:	
SAMUELLE KLEIN-VON REICHE, Psy.D.:	:	SUPPLEMENTAL ORDER
License No. 35SI00324600	:	
	:	
TO PRACTICE PSYCHOLOGY	:	
IN THE STATE OF NEW JERSEY	:	

This matter was reopened before the New Jersey State Board of Psychological Examiners (the "Board") for consideration of the issue of the amount of costs to be assessed upon respondent Samuelle Klein-Von Reiche, Psy.D., which issue was specifically reserved at the time that we entered our order in this matter both to afford the State an opportunity to make a cost application and to allow respondent to submit written objections to any items sought to be recovered as costs by the State. Pursuant to the Initial Decision on Penalty issued by the ALJ which granted attorney fees and costs to the State and the Modified Final Order and Decision entered on November 30, 2009 which affirmed the

Judge's determination on costs and attorney fees, the State filed a final application for costs and attorney's fees on October 20, 2009.

Upon review of the submissions made by the parties, we conclude, that respondent is to be required to pay a total of \$32,855.29 in costs, consisting of the following cost assessments:

<u>Costs</u>	<u>Amount Assessed</u>
Counsel fees	\$ 24, 862.00
Expert fees & Shorthand Reporting Costs	\$ 5,013.00*
Investigative Costs	\$ <u>2,980.29</u>
Total costs	\$ 32,855. 29

Set forth below is a summation of the history of this matter (limited to submissions made in support of or opposition to the State's cost application) and the conclusions we have reached which support the within Order.

DISCUSSION

The State submitted a certification detailing all costs sought on October 20, 2009. Within the certification, the State documents the totals of \$24,924.00 in counsel fees, \$4354.40 for expert fees and certified shorthand reporting costs, not including

*This amount includes the shorthand reporting costs for the October 5, 2009 oral argument on Exceptions and mitigation hearing which was an additional \$658.50 (See Exhibit A attached hereto).

the costs from the October 5, 2009 mitigation hearing before the Board as supported by the certification of J. Michael Walker, Executive Director of the Board and a total of \$2,980.29 for investigative costs supported by the certification of John T. Vatasin, Supervising Investigator.

The State's certification was supported by the time sheets of DAG Krier. A memorandum by Nancy Kaplan, then Acting Director of the Department of Law and Public Safety detailing the uniform rate of compensation for the purpose of recovery of attorney fees (See State v. Waldron, Docket No. L702-99 (Law Div. December 4, 2001)) established in 1999 and amended in 2005, sets the hourly rate of a DAG with nine plus years of legal experience at \$155.00 per hour.

Expert fees and short hand reporter costs included a total of \$3,525.00 in expert witness fees and \$829.00 in short hand reporting costs including reporter appearance fees and transcript for witness Samuelle Klein-Von Reiche, Psy.D., on November 20, 2006 at an Investigative Inquiry before the Board; July 16, 2006 transcript of witness C.V. at an investigative inquiry before the Board, and a transcript of the hearings at the Office of Administrative Law held on November 19, 2008, December 11, 2008 and April 16, 2009. The Board added an additional \$658.50 in certified short hand reporting fees for the mitigation hearing and transcript for the October 5, 2009 hearing before the board. Exhibit A

attached hereto is a copy of the bill. Thus the total cost for expert fees and short hand reporting is \$5013.00.

On November 2, 2009 a letter brief in opposition to the application for costs and attorney fees was received from respondent. Respondent objected to the billing of an hourly rate of \$155.00 for an attorney with five to ten years experience. The basis for the objection was a reference made to an article published in the April 27, 2009 Home News Tribune which allegedly attributes a quote to Attorney General Milgram that "deputy attorneys general are billed at \$78.00 an hour, compared with \$130- to \$150 for junior associates at private firms. Assistant attorneys general, the state's highest-paid lawyers, bill at around \$155.00." A copy of the article was not produced for review by the Board. Based on this article, respondent has requested an evidentiary hearing on fees.

Respondent also seeks a reduction of time from the costs sought for attorney fees, claiming a full explanation of the fees has not been provided. A question is raised as to the use of the three letter code "CMB" for 13.6 hours where DAG Krier in her certification did not define the code.

Respondent's attorney also questions eight hours for preparation of witness M.A. for trial as unreasonable and opines that this fact witness could be prepared in a fifteen to thirty minute telephone conference. A challenge is also made to the time

spent on opposing the subpoena served on M.A. and for the time charged by the DAG to pick up documents on the basis that this was a task for a messenger and not an attorney. The respondent also questioned the calculation used for determining the investigative time.

On November 6, 2009 DAG Krier submitted a letter brief in lieu of a more formal submission providing a response to the objections raised by the Respondent's attorney. The State has requested that two entries, each for .2 hours each, entered for CCM on October 15, 2008 and for CCR on January 9, 2009 be deleted from the calculations as they pertained to another matter.

The State opposed the request for a plenary hearing on the costs and argued that the Courts "stongly discourage the use of an attorney-fee application as an invitation to become mired in a second round of litigation." Furst v. Moomjy Inc., 182 N.J. 24 (2004). Additionally, the State argues that the rate of compensation for attorneys in the office is established by a Memorandum issued by the Acting Director of the Division of Law and not by an article in the Home News Tribune.

In response to the allegation that 25 hours were billed without explanation, the State upon subsequent review of the time sheets submitted, stated that there are only five entries which lack descriptions and that the vast majority of the entries contain a description of the activity that was performed. The descriptions

in conjunction with the certification provided a clear indication of the legal task that was performed. The State amended the amount of counsel fees sought from \$24,924.00 to \$24,862.00 for the two entries which pertained to other cases which were deleted. Also included with the State's letter brief was the certification of June Levy, Assistant Director of the Division of Consumer Affairs and Chief Fiscal Officer for the Division, providing an explanation as to how the enforcement bureau investigative charges are calculated.

CONCLUSIONS AND ORDER

We have received and reviewed the submissions of the State and the Respondent. We note initially, that there has been no objection raised as to the amount sought for Expert Fees and Shorthand Reporting Costs.

We turn to the threshold issue questioning the accuracy of the rate of the attorney fees. The certification of Acting Director Nancy Kaplan first issued in 2005 establishes the rate of compensation for attorneys in the Division of Law. This fee schedule has been presented and accepted in numerous prior litigated cases brought by the State and the rate appears to be well below the community standard. The basis for respondent's argument is information contained in a newspaper article without documentation which will not be relied upon by the Board to

establish the rate of compensation. The Board finds that nothing has been submitted necessitating an evidentiary hearing on this issue.

The State submitted proofs supporting 106.4 hours spent on researching, analyzing, drafting, preparing, editing, revising and finalizing a Complaint filed on February 4, 2008, and a Brief and Appendix with multiple attachments in Support of the State's Motion for Summary Decision submitted on October 3, 2008, and response to a Motion filed by the Respondent for Reconsideration and preparation and examination of witnesses for hearings on penalty held before the Administrative Law Judge in the Office of Administrative Law on November 19, 2008, December 11, 2008 and April 16, 2009. In addition records document time spent drafting and submitting exceptions to the ALJ's Initial Decision on Penalty and preparation and cross examination of witnesses in the mitigation hearing held by the Board on October 5, 2009. The Board finds the total amount of time expenditure on this matter is reasonable and necessary to appropriately prosecute the case and declines to further modify the attorney fee assessments.

Moreover, we find the application as supplemented to be sufficiently detailed to permit our conclusion that the amount of time spent, and the overall fees sought to be objectively reasonable as well. (See, Poritz v. Stang, 288 N.J. Super 217 (App. Div. 1996)). The Board has determined that the hours that

DAG Krier recorded with narratives reasonably represent the time spent on this matter. The 25 hours respondent questions as undocumented were not specifically referred to in the objection by her attorney. Our review of the State's submissions reveals several entries which did not have a detailed description but, the entries were described sufficiently by the code and the certification supplied by the State. We therefore conclude a sufficient basis exists to impose these fees.

We find that in regard to all other charges the State has adequately documented the legal work which was performed and find that the work documented was work necessary to advance the prosecution of this case. We are thus satisfied that the State has adequately documented the tasks performed to support the application for attorney's fees and that the claims are reasonable especially when viewed in the context of the seriousness and scope of the action maintained against Dr. Klein-Von Reiche. Furthermore, the costs are justified in this case involving the protection of the public safety and welfare as the conduct involves violations of the Board's regulations concerning an egregious boundary violation and gross professional misconduct.

We note the supplemental certification of the Assistant Deputy Director of the Division of Consumer Affairs and Chief Fiscal Officer establishing the calculation of the rates for investigative costs. We rely upon the State's rationale that these cost

allocations have been reviewed and approved by the State Auditor regularly since 1998. We recognize that the calculation for investigative costs includes the actual hours of investigation and the method by which the hourly rate is determined and thus comports with the requirement set forth by the courts. (See, Rendine v. Pantzer, 141 N.J. 292 (1995); Poritz v. Stang 288 N.J. Super. 217 (App. Div. 1996)).

In sum, we find that the State may be awarded the attorney's fees assessed herein pursuant to N.J.S.A. 45:1-25, and we further determine that the State should be awarded all investigative costs, expert witness fees, transcript and shorthand reporter costs.

IT IS THEREFORE on this ~~14th~~ day of January, 2010,

ORDERED THAT:

Respondent Dr. Klein-Von Reiche shall pay costs and counsel fees incurred by the State pursuant to N.J.S.A. 45:1-25 in the amount of \$32,855.29 within thirty (30) days of the date of this Order by certified check or money order made payable to the Treasurer of New Jersey and delivered to Michael Walker, Executive Director, at the office of the Board of Psychological Examiners. In the event the costs are not timely satisfied a Certificate of Debt may be filed.

NEW JERSEY STATE BOARD OF
PSYCHOLOGICAL EXAMINERS

By: Nancy E. Friedman
Nancy E. Friedman
Chair